

Delegated decision report

CABINET MEMBER DECISION UNDER DELEGATED POWERS

DECISION CANNOT BE TAKEN BEFORE FRIDAY, 19 AUGUST 2011

Title	APPROVAL FOR THE TERMS OF THE DISPOSAL OF VENTNOR WINTER GARDENS TO ROBERT THOMPSON'S HAMBROUGH GROUP
Report Author	REPORT TO THE DEPUTY LEADER AND CABINET MEMBER FOR THE ECONOMY AND THE ENVIRONMENT

PURPOSE

1. To agree to the freehold disposal of Ventnor Winter Gardens on the terms of the best and final offer made by the selected preferred bidder for the facility, Robert Thompson's Hambrough Group.

OUTCOME

2. The retention of the Winter Gardens in the town achieved through agreed investment and a sustainable operating model providing community use of the building as a theatre/hire venue.

BACKGROUND

3. A management agreement was granted by South Wight Borough Council to Ventnor Town Council (VTC) in March 1995 whereby the Council provided grant subsidy on an annual basis towards the operation of the business and VTC operated the Winter Gardens as a theatre/hire venue with associated catering. This agreement was inherited by the Isle of Wight Council in April 1995.
4. At the time the management agreement was concluded the building was in a relatively poor state of repair and condition and since 1995 this has become worse, with the current backlog of repairs estimated at £650,000. Despite the fact that the Winter Gardens was not classed as an operational building from a Council perspective (as it was being operated by VTC) it still invested in the repair and maintenance of it during the course of the management agreement, albeit that this investment was less than ideally required and was not sufficient to address the ongoing deterioration of the building fabric.

5. In autumn 2010 Ventnor Town Council determined that the facility was not economically viable for it to continue to operate; this was reinforced by the Isle of Wight Council signalling its intention to withdraw the subsidy which it provided to the Town Council towards the operational costs of providing the building (this approach being consistent with that taken to Ryde and Shanklin theatres). The two Councils agreed that they would work together to undertake a joint marketing exercise of the venue to seek a new owner with a sustainable vision and ability to invest in the building such that it was able to make a contribution to the economic and social well being of Ventnor.
6. A further feature of the marketing exercise was that any new owner would be required to provide for, "some continued community use of the building as a theatre/hire venue". It was accepted that this restriction on the use of the building would impact on the likely financial receipt that the Council may have expected to receive from its sale if this was done without restriction. The difference could effectively be considered as the Council's contribution to community activities in the facility.
7. Previous valuations (August 2010) of the Winter Gardens suggested it may be worth in the order of £200,000 to £250,000 if it were to be used for the purposes allowed by its existing planning designations. Previous advice from the Planning department has been that, given its location within a Conservation Area demolition and redevelopment of the facility would be unlikely to be given consent. This therefore could be considered the maximum receipt that may be achievable for the site should the Council have chosen to market it without restriction.
8. The marketing exercise commenced in February 2011 with advertisements in the County Press and the Leisure Opportunities magazine, seeking expressions of interest, "in the form of a financial and operational proposal for the building, which is available on flexible terms with the tenure open for negotiation", together with associated sales particulars which can be seen in Appendix A. It was made clear at this stage that bids requiring Council funding for the operation and maintenance of the facility would not be considered.
9. A particular feature of the marketing exercise was that the Council did not seek to be overly prescriptive in terms of its expectations of a potential new owner of the Winter Gardens. This use of an outcome based approach does carry a slight risk in that people's views of a final agreement will be shaped by their own thinking and own interpretation of the outcome. The use of tightly defined criteria at the start of a process makes it much easier for people to be able to evaluate its success once it is concluded but may also dissuade any viable proposals from coming forward and could stifle possible innovation and creativity in the development of proposals for the facility.
10. The marketing was carried out over a period of eight weeks and generated interest from twenty separate parties. There was also considerable interest locally within Ventnor particularly expressed at Town Council meetings, one of which was attended by officers of the Isle of Wight Council to discuss the marketing programme and selection of the preferred bidder.
11. The marketing was undertaken on the basis of proposals and offers for the Winter Gardens being received by 22 March 2011. Those bidding were advised that their proposals would be assessed against (Stage 1) evaluation criteria in order to identify

a preferred bidder with which the Council could negotiate best and final terms for the disposal of the Winter Gardens. Six parties submitted proposals at this stage.

12. The criteria against which the proposals were assessed are shown in Appendix B. Each element was marked 0 to 5 in terms of how appropriate or relevant the assessor deemed the proposal to be in respect of that criteria and each is weighted in accordance with the level of overall importance. As can be seen from the final column this then shows the total marks available for each of the criteria with a total possible score of 160 points.
13. The first stage evaluation completed by officers was not able to identify a clear 'best proposal' that could be considered for confirmation as the Council's preferred bid. Three proposals were significantly better than the remainder and were relatively closely scored against each other. These bidders were then invited to attend an assessment panel to give a brief presentation of their proposals and to answer questions in order to better differentiate the proposals one from the other
14. The second (Stage 2) assessment panel was held on 14 April 2011. It comprised Isle of Wight Council officers (4), local Isle of Wight Council Members (1) and Members of Ventnor Town Council (2). One of the Council's ward Members was unable to take part in the panel as they were advised that they had a conflict of interest with one of the bidders; the clerk from the Town Council was present in an advisory capacity and was not part of the evaluation process
15. The presentation and answers to questions raised by the assessment panel were reassessed against a further set of criteria that built on those used at stage 1, as set out in Appendix C. Again these were marked from 0 to 5 and weighted according to the level of importance, and the maximum scores available are shown in the Appendix, together with the total maximum possible score of 165. On the basis that there were seven members of the assessment panel this meant that the total possible score was 1,155.
16. The Stage 2 evaluation resulted in Robert Thompson's Hambrough Group (RTHG) being ranked first by all of the panel members with a total score of 896 and with a clear lead over the other short listed bidders (scoring 787 and 631, respectively). This was reported to the Cabinet Member for the Economy and the Environment who confirmed his agreement to RTHG being the Council's preferred bidder for the Winter Gardens and officers entering into dialogue with the Group to agree heads of terms for its acquisition of the Winter Gardens.
17. The RTHG proposition is to develop a facility in which food and beverages form the basis of the overall offer. A number of distinct outlets are intended to cater for all tastes and interests. This offer would underpin an events strategy that would encourage and develop community and other uses of the main auditorium area. This area would also be used to support major conferences and functions. The group is looking to invest £1.3m immediately in the current building but would like to add two wings to the building (bringing the estimated total cost to £3m) to provide accommodation and spa/exhibition facilities. Ideally it would like to do all of the building works at the same time but recognises that the addition of the wings may have to be at a later date.

18. Officers have been in detailed negotiations with RTHG since its appointment as the preferred bidder and are now in receipt of the Group's best and final proposal for the terms it would accept in acquiring the Winter Gardens. These are set out in detail at appendix D to this report. It is worth noting that these terms:
- Secure community access to the auditorium for a period of ten years, including the provision of a box office service
 - Provide the Council with an option to repurchase the facility should the proposed investment not proceed within a reasonable time frame.
19. Officers are comfortable with all of the terms set out in this best and final offer by the RTHG with the exception of one of the proposed restrictive user clauses for the facility. RTHG have advised that it will only accept a requirement for the auditorium to, "be retained and used for a minimum period of 10 years from the date of completion primarily for arts, cultural, educational and entertainment activities and ancillary purposes in support of these activities". It had been hoped that this covenant could have applied for 20 years and there has been some robust discussion and negotiation around this particular point. RTHG is in receipt of advice that ten years is the absolute maximum it should consider in this clause therefore, whilst confirming that the auditorium is central to its long term plans for the building, it would not accept a period of 20 years in this restrictive covenant.

STRATEGIC CONTEXT

20. Ensuring that the Council achieves best consideration from any property disposal as part of its rationalisation programme directly ties in with the key corporate priority of Delivery of Budget Savings through Changed Service Provision. Best consideration is not always defined in monetary terms and community benefit may on occasions also form part of this criteria.
21. This disposal supports the Council's key corporate priority of Regeneration and the Economy, by enabling a significant investment in the site by RTHG (as identified in its proposals); such an investment is likely to produce direct and indirect employment in the Town and may also give others the confidence to invest in the area.
22. Given the Council's limited resources a decision to provide continued support for arts and entertainment activities through revenue support or the introduction of restrictive user covenants in asset disposals may restrict its ability to use these resources to pursue new or emerging priorities.
23. There are not believed to be any adverse human rights issues relating to this proposal, nor are there believed to be any adverse crime and disorder issues. Indeed, surplus buildings that remain vacant can be prone to vandalism particularly if they are vacant for a long period of time and it is therefore in the Council's best interest to dispose of such properties, if they are not to be reused in anyway by IWC, as quickly as possible.

CONSULTATION

24. Significant consultation has taken place with Ventnor Town Council and Council officers have attended a town council meeting at the Winter Gardens (prior to its closure) to answer questions from the town council and members of the public.
25. Once the marketing exercise was completed, two members of the town council and one of the ward members took part in the Stage 2 assessment panel deliberations to identify the preferred bidder.
26. The negotiations with RTHG resulted in a difference of opinion between the parties regarding the length of time for the guaranteed retention of the auditorium. In light of this a further meeting was held with the town council in order to brief its members on the position and to seek its views on the retention period to be adopted. Its resolution was, "...this Council does not view the ten year limitation on guaranteed continuing community use or on ten years provision of the auditorium as grounds for breaking off negotiations with the Hambrough Group". Ten town councillors attended the meeting and, whilst two had to abstain due to a personal interest, the remaining eight all voted in favour of this resolution.
27. The ward members for Ventnor were also consulted on this point and both are comfortable with the proposals being made by RTHG, stating "...we fully support the proposed ten year period guaranteeing some community use, and an equivalent ten year period for the auditorium requiring arts, cultural, educational, and entertainment activities, on the understanding that this is the best way to ensure the building is restored and becomes a vibrant and economically productive Island attraction capable of generating more visitors for Ventnor, whilst at the same time giving local community groups a ten year window of opportunity to work constructively with the Hambrough Group in developing the venue as a financially viable long term community asset."
28. Whilst this report was in preparation the Council received a petition of some 437 signatures setting out that the signatories, "wish to record our deep and grave concern that the Isle of Wight Council should not enter into any final agreement to part with ownership of the Ventnor Winter Gardens without imposing comprehensive binding and long term obligations to guarantee affordable access to and use of the Winter Gardens facilities by local community members and groups".

FINANCIAL / BUDGET IMPLICATIONS

29. The Council has been subsidising Ventnor Town Council as part of the management agreement in the sum of approximately £23,000 per annum. By terminating the management agreement this sum has been saved. Following the termination of the management agreement however, the Council is now responsible for all outgoings relating to the property whilst it is vacant. An application has been made for an Empty Rates assessment in order to mitigate this outgoing, but there will still be some holding costs prior to transfer.
30. The Council has also undertaken an ongoing regime of repair and maintenance to the building with, on average, £15,000 per annum being spent over the last five years. By transferring the ownership of the property to an investor/operator the Council no longer has to invest monies in the repair and maintenance of a building that it does not occupy or operate.

31. The Winter Gardens has an estimated repair backlog of some £650,000 and this has not been a priority for the allocation of Council resources since taking over its ownership from South Wight Borough Council. By disposing of the property the Council will not have to commit to undertaking these repairs in whole or part.
32. The price agreed for the freehold interest is £1, primarily reflecting the condition of the building, but also the terms of the restricted user covenants, and the proposed level of investment to be undertaken. (The same level of offer was made by the two other stage 2 bidders, again reflecting these issues.). The building was valued at £200,000 to £250,000 in August 2010 for the purposes of an entertainment venue. The Council could be considered to be forgoing this potential capital receipt in accepting the proposal of RTHG.
33. The Council's capital resources are limited and its main capital commitments outside of schools and transport have to be funded by capital receipts from disposal of assets or from prudential borrowing. In considering this proposal the benefits to the local community need to be measured against the capital receipt that would otherwise be obtained. The cost to the Council is effectively the additional prudential borrowing costs that will need to be incurred on £200,000 - £250,000 that would otherwise have been met from a capital receipt. Over a 20 year period this would amount to a revenue cost of some £20,000 per annum to £25,000 per annum.

LEGAL IMPLICATIONS

34. The Council has the power to dispose of property under Section 123 of the Local Government Act 1972, for best consideration. Best consideration does not necessarily mean the highest price achievable, as this can be obtained by means other than purely monetary consideration, such as the additional benefits generated by and for communities whilst observing the Council's duty to make proper use of public funds and protect Council/local taxpayer's interests and service delivery.
35. The highest price achievable for the Winter Gardens site may be through redevelopment for an alternative use. Although indications are that such a use may not be permitted. However the Council had specified within its marketing the need for investment into the property alongside some continued community use and access, and by adhering to these criteria the financial offer of £1 (the level of offer was the same for all three short listed bidders) is likely to represent best consideration when taking the criteria into account.

PROPERTY IMPLICATIONS

36. As this is principally a property based report there are not considered to be any additional property implications that require highlighting in this assessment.

EQUALITY AND DIVERSITY

37. The Council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to impact assess its services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. None of the identified groups are likely to be adversely affected by this decision.

OPTIONS

38.

- (1) Agree to the disposal of Ventnor Winter Gardens to Robert Thompson's Hambrough Group on the terms set out in Appendix D.
- (2) Agree to the disposal of Ventnor Winter Gardens to Robert Thompson's Hambrough Group on the terms set out in Appendix D amended such that the auditorium is to be retained for the purposes shown for a period of twenty (20) years.
- (3) Not agree to the disposal of Ventnor Winter Gardens to Robert Thompson's Hambrough Group.
- (4) Terminate negotiations with Robert Thompson's Hambrough Group, appoint the next best bidder to be the preferred bidder and commence negotiations with it for the disposal of Ventnor Winter Gardens.
- (5) Undertake a new marketing exercise for the disposal of Ventnor Winter Gardens without any restrictions on its use.

RISK MANAGEMENT

39. If the Council proceeds with the disposal to RTHG there is a risk of challenge to the process from one of the other stage 2 bidders on the basis that insufficient community access to the building has been secured or that the Council was not sufficiently objective in how it undertook the evaluations of the bids. One of the other bidders has been in regular dialogue with the Council seeking clarification and further information since the appointment of RTHG as the preferred bidder. The evaluation process has however been objective and clearly documented throughout and is summarised in the appendices to this paper. Guidance to bidders has only ever referred to the provision of, "some continued use of the auditorium as a theatre/hire venue" and it was for bidders to interpret this within the context of producing a business plan that required no revenue support from the Council.
40. There is a risk of challenge by some community groups or organisations that the disposal of the facility on the terms set out in Appendix D does not offer best value to the Council in as much that the secured level of community access to the facility is insufficient. This is held to be not the case on the basis that the potential capital receipt the Council is forgoing for the building equates to an annual sum of approximately the same level of revenue funding the Council used to provide Ventnor Town Council to ensure community access to the facility. Moreover, the planning status of the building would make it very difficult for RTHG to remove the auditorium from the building without replacing it with a similar public entertainment space.
41. If the Council is minded to seek only to conclude the disposal of the Winter Gardens on terms that provide for the retention of the auditorium for 20 years then there is a risk that RTHG will withdraw from the negotiations in respect of the facility. Were this to be the case then the Council could look to the next best other bidder and commence negotiations with it for its acquisition of the facility. The balance of outputs required from the disposal could be seen to be distorted in such an approach and it

may therefore be necessary to review the weighting applied to the evaluation criteria to confirm which of the two other bidders to enter into negotiations with.

42. There is a risk of RTHG encountering a barrier to its development activities that prevents it from completing its proposals. This could be in the actual state of repair of the building, access to finance or planning permissions. The Council has mitigated this risk by providing as much information as it has available to all bidders and by undertaking sufficient checks on the bidder where necessary. RTHG has also been in preliminary discussions with the planning authority. If RTHG were unable to proceed then the Council could exercise its option to buy back the facility, allowing it to seek further offers for it in the future.

EVALUATION

43. The Council has worked closely with Ventnor Town Council and the local Members and has been through a clear and robust process in order to identify the best proposal which provided a balanced mix of investment, community access to the facility, economic benefits to the Town and opportunity for the long term success of Ventnor Winter Gardens. Of the three proposals considered by the stage 2 evaluation panel all had relative strengths and weaknesses but that of Robert Thompson's Hambrough Group provided the best proposal that met all of these aspirations.
44. Negotiations with the RTHG have also been suitably robust in order to translate the many and varied requirements of everyone with an interest in the Winter Gardens into legal documentation easily understood by all. There is a sense of disappointment that the 20 year guarantee on the retention of the auditorium could not be agreed and there is a strong likelihood that some parties may consider that the ten year agreement is insufficient and not in accord with the terms of the 'competitive exercise' just completed. This does however need to be set against the Council's determination to retain the asset in the first instance. Without the Winter Gardens the issue of community access would not be one for debate at all.
45. It could be argued that if the Council had been more specific about its requirements for community access to the building as part of the initial briefing to potential bidders there would have been little ambiguity in the negotiations with the preferred bidder. Also, that all bidders would have been clear about how they stood one against the other in the final analysis. This is however an overly restrictive view on a process that sought to consider the many outputs to be achieved in the disposal of the Winter Gardens and to take a balanced view on the best overall proposal for the town. Such a proposal (or indeed any) may not have been made had the Council been overly restrictive in determining its aspirations for the facility. The Council is effectively forgoing a potential £200,000 to £250,000 capital receipt for the asset but is using this to secure investment in the town and the facility. It needs therefore to be clear about the likelihood and impact of its return on this investment.
46. The ten year community user covenant does provide local user groups with the opportunity to make use of the facility and build partnerships with RTHG that will be to the mutual benefit of all parties. RTHG will require community use to support its business plans and operating models and enable it to operate the building for its own purposes. The level of potential capital receipt the Council is forgoing to invest and secure the future of the Winter Gardens equates to £20,000 - £25,000 a year for this

period, which is broadly the same as the level of support the Council has been contributing to the management of the Winter Gardens over a number of years.

47. RTHG's proposed investment for phase one of the project is in excess of £1m and for the total development runs to more than £3m. This level of investment will have a significant impact on Ventnor both economically and socially, and to the building itself. Access to the financial resources to make these levels of investment was one of the more important factors assessed, and the panel was assured by RTHG that funds were available to undertake both phases of development, and that the business plan presented as part of the proposal was deliverable. RTHG have agreed to provide a statement of funds to confirm that this is the case prior to an exchange of contracts.
48. Whilst not part of the assessment criteria, it was also considered beneficial that RTHG is a recognised Ventnor business which is seeking to expand in a major way, and in such a manner that it will help "put Ventnor on the map".

RECOMMENDATION

49. It is therefore recommended that the Council adopts:

Option (1): Agree to the disposal of Ventnor Winter Gardens to Robert Thompson's Hambrough Group on the terms set out in Appendix D.

APPENDICES ATTACHED

- [APPENDIX A](#) - Sales details
- [APPENDIX B](#) - Ventnor Winter Gardens Stage One Evaluation of Expressions of Interest
- [APPENDIX C](#) - Ventnor Winter Gardens Stage Two Evaluation of Expressions of Interest
- [APPENDIX D](#) – Proposed Heads of Terms for the Disposal of Ventnor Winter Gardens

BACKGROUND PAPERS

None

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STUART LOVE
Strategic Director
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COUNCILLOR GEORGE BROWN
*Deputy Leader and Cabinet Member
Economy and the Environment*

Decision

Signed

Date
